

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

GUADALUPE RESPICIO ORTEGA-MENDEZ
(02),

Defendant.

No. CR-08-6014-EFS-02

**ORDER GRANTING IN PART DENYING IN
PART AND HOLDING IN ABEYANCE IN
PART, PLAINTIFF'S MOTION FOR
DECLARATION OF \$50,000 BAIL
FORFEITURE AND DEFAULT JUDGMENT,
AND GRANTING IN PART AND DENYING
IN PART, MR. ORTEGA'S MOTION TO
SET ASIDE BAIL FORFEITURE**

This matter comes before the Court on Plaintiff United States of America's Motion for Declaration of \$50,000 Bail Forfeiture and Default Judgment, ECF No. 107. The U.S. Attorney's Office (USAO) asks the Court to declare forfeited and enter default judgment on the \$50,000 unsecured appearance bond posted by Ramon Ortega and Miguel Prieto, ECF No. 25, which was intended to secure the appearance of Defendant Guadalupe Respicio Ortega-Mendez at all court proceedings in this matter. Victor Lara, on behalf of Mr. Ortega, opposes the motion and moves to set aside the bail forfeiture. ECF No. 181. At the November 7, 2013 hearing, the Court ruled on these motions; this Order memorializes and supplements the Court's oral ruling.

On March 3, 2008, as a condition of Defendant's release pending trial, Ramon Ortega, Miguel Prieto, and Defendant jointly posted a

1 \$50,000 unsecured appearance bond to ensure, among other things, that
2 the Defendant would "appear before this [C]ourt and at such other
3 places as the [D]efendant may be required to appear, in accordance
4 with any and all orders and directions relating to the [D]efendant's
5 release" in this case. ECF No. 25. On July 25, 2008, Defendant
6 failed to appear for the pretrial conference in his case, ECF No. 78,
7 and a bench warrant was issued for Defendant's arrest, ECF No. 76. To
8 date, Defendant has not been arrested. On February 11, 2013, the USAO
9 sought the forfeiture of the surety bond. ECF No. 108. On October
10 23, 2013, Ramon Ortega sought to set aside forfeiture. ECF No. 181.

11 Pursuant to Federal Rule of Criminal Procedure 46(f), the Court
12 "must declare the bail forfeited if a condition of the bond is
13 breached." Fed. R. Crim. P. 46(f)(1). In other words, forfeiture is
14 mandatory when a bond condition is breached. *United States v. Nguyen*,
15 279 F.3d 1112, 1115 (9th Cir. 2002). The bond is a contract between
16 the government, the Defendant, and the surety, and is therefore
17 subject to the six-year statute of limitations found in 28 U.S.C. §
18 2415. See *United States v. Toro*, 981 F.2d 1045, 1047-48 (9th Cir.
19 1992). There is no requirement, statutory or otherwise, that the USAO
20 notify sureties when a defendant absconds. *United States v. Marquez*,
21 564 F.2d 379, 380 (10th Cir. 1977) ("[I]t would be incongruous to
22 condition the sureties' liability on notice by the government of the
23 defendant's failure to appear, and we decline to do so."). In fact,
24 sureties are presumed to have constructive notice when a condition of
25 the bond is breached. *United States v. Felix-Meza*, 825 F.2d 1334,
26 1336 (9th Cir. 1987) (per curiam) ("Because [the bond agent] Flores

1 was legally required to assure [defendant] Felix-Meza's appearance and
2 learn of her failure to appear, Flores was charged with constructive
3 notice that Felix-Meza had not appeared."). Although the USAO does
4 not explain why it waited more than four years to seek bail
5 forfeiture, the motion is not barred by the statute of limitations.
6 Accordingly, the Court must declare the bond of \$50,000 forfeited.

7 After a court declares a bond forfeit, the court may still
8 "remit in whole or in part the judgment under the same conditions
9 specified in Rule 46(f)(2)." Fed. R. Crim. P. 46(f)(4). Under Rule
10 46(f)(2)(B), the court may remit forfeiture if "it appears that
11 justice does not require bail forfeiture." The Court must evaluate
12 six factors to determine whether to set aside or remit all or part of
13 the forfeiture:

14 1) the defendant's willfulness in breaching a release
15 condition; 2) the sureties' participation in apprehending
16 the defendant; 3) the cost, inconvenience, and prejudice
17 suffered by the government; 4) mitigating factors; 5)
whether the surety is a professional or a member of the
family or a friend; and 6) the appropriateness of the
amount of the bond.

18 *Nguyen*, 279 F.3d at 1115-16. If any portion of the forfeiture is
19 remitted, the Court must partially exonerate the bond. *Id.* at 46(g).

20 The first, third, and sixth factors favor the government. There
21 can be no reasonable dispute that the Defendant willfully breached his
22 release condition by absconding, and the government suffered cost and
23 inconvenience in preparing for a trial that was not held and in
24 attempting to locate and apprehend Defendant. Furthermore, the bond
25 amount was not unreasonable. Additionally, the Court notes that Mr.
26 Ortega is a family member of Defendant and not a professional surety.

1 Having weighed these factors, and in the interests of justice,
2 the Court finds it appropriate to remit \$42,500 of the \$50,000
3 forfeiture as to Mr. Ortega. As to Defendant Ortega-Mendez, the Court
4 finds the interests of justice require no remittance. Additionally,
5 as Mr. Prieto was not present, and allusions were made to possible
6 medical issues, the Court holds in abeyance for two weeks its decision
7 as to remittance as to Mr. Prieto, to await any additional information
8 that may be provided.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. The USAO's Motion for Declaration of \$50,000 Bail
11 Forfeiture and Default Judgment, **ECF No. 107**, is **GRANTED IN**
12 **PART, DENIED IN PART, and HELD IN ABEYANCE IN PART.**

13 2. Ramon Ortega's Motion to Set Aside Forfeiture, **ECF No. 181**,
14 is **GRANTED IN PART AND DENIED IN PART.**

15 3. Pursuant to Rule 46(f)(1), the Court declares the \$50,000
16 appearance bond in the above-captioned matter, ECF No. 25,
17 **FORFEITED** based on the fact that Defendant breached a
18 condition of the bond.

19 4. Pursuant to Rule 46(f)(4) and 46(g), the Court **REMITTS** and
20 **EXONERATES** \$42,500 of that forfeiture in the interests of
21 justice as to Mr. Ramon Ortega.

22 5. **DEFAULT JUDGMENT** is hereby rendered in favor of the United
23 States of America, in the amount of **FIFTY THOUSAND DOLLARS**
24 **(\$50,000).** As to this default-judgment amount, default
25 judgment is entered against Defendant Ortega-Mendez in the
26 amount of \$50,000, and default judgment is entered against

1 Mr. Ramon Ortega in the amount of \$7,500. Defendant and
2 Mr. Ramon Ortega are jointly and severally liable for
3 \$7,500 of the total \$50,000 awarded to the United States of
4 America.

5 6. The Court holds in abeyance until two weeks from the date
6 of this Order its ruling on remittance and judgment as to
7 Miguel Prieto.

8 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
9 Order and provide copies to the USAO, defense counsel, counsel for the
10 Sureties, Sureties, and the Court's Financial Administrator.

11 **DATED** this 12th day of November 2013.

12 _____s/Edward F. Shea_____
13 EDWARD F. SHEA
14 Senior United States District Judge
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